



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/162454

PRELIMINARY RECITALS

Pursuant to a petition filed December 08, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 15, 2015, at West Bend, Wisconsin.

The issue for determination is whether Petitioner's FoodShare benefits have been correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Written by ALJ David D. Fleming on behalf of:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner filed this appeal to contest the reduction in the amount of his FoodShare benefits effective December 1, 2014.
3. Petitioner completed a FoodShare case review in October 2014. In that review Petitioner indicated he does not have a utility expense other than a phone expense. He also submitted paycheck stubs. This led to a decrease in his FoodShare allotment effective December 1, 2014 and the discontinuance of his BadgerCare+.

4. Subsequently, Petitioner contacted the agency to indicate that the paycheck stubs he had submitted as part of the review process had unusually high income. He submitted his two most recent paystubs in late November 2014. The agency processed the new information and concluded that Petitioner was still eligible for BadgerCare+ but that there was no change to the reduction in his FoodShare.
5. Petitioner's FoodShare allotment was reduced from \$129.00 in October and \$149.00 in November to \$16.00 for December.
6. Petitioner's FoodShare household consists of one person.
7. The agency determined that Petitioner's gross household income, based on the new paystubs he submitted, consists of Social Security benefits of \$653.00 and \$170.37 of gross earned income. Gross earned income was determined by adding gross pay from the most recent checks, averaging the two and multiplying by 2.15 ($\$26.25 + \$132.31 = \$158.56/2 = \$79.28 \times 2.15 = \$170.45$). Thus Petitioner's total gross income is \$823.45.
8. Petitioner is allowed the following deductions in the allotment calculation formula: a standard deduction of \$155.00 and an earned income deduction of 20% or \$34.09. This brings his adjust income to \$634.36. Half of this is \$317.18. As Petitioner pays rent of \$287.00 and has only the standard phone allowance of \$30 for total shelter expenses of \$317, he does not have a shelter deduction.

Note- there are slight differences between my calculations and the agency's but only by a few cents and this does not change results.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. 7 *Code of Federal Regulations (CFR)*, §273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 1.1.4. The agency must budget all income of the FS household, including all earned and unearned income. 7 *CFR* § 273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 4.3.1. The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH*, §4.1.1.

The gross income limit for a household of one is \$1946. *FSH*, §8.1.1.1.

If a household passes the gross income test, the following deductions are applied (*FSH*, at § 4.6):

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, 7 *CFR* § 273.9(d)(1);
- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 *CFR* § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have actual utility obligations unless a household has received energy assistance in the prior 12 months and then deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5). The standard allowance for a phone expense is \$30.00. *FSH*, §8.1.3. There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH*, §§ 4.6.7.3 and 8.1.3.

Petitioner notes a telephone expense of \$40.00. Nonetheless, the standard deduction where a person has a telephone expense is \$30.00. Again, *FSH*, §8.1.3. Given Petitioner's income and deductions, the correct monthly FoodShare allotment is \$16.00. *FSH*, §8.1.2.

In reviewing the calculation of Petitioner's FoodShare allotment I do not find any errors in the final allotment determination.

Finally, clearly Petitioner's income fluctuates and an agency can average income over a certification period. *FSH*, §1.2.4.2. Nonetheless, Petitioner's year to date through October shows an average gross of about \$350 per month so that was far over the income used by the agency. If he earns far less in the winter he needs to provide more comprehensive earnings data than presented to date.

CONCLUSIONS OF LAW

That the available evidence is sufficient to demonstrate that it correctly determined Petitioner's FoodShare allotment as of December 2014.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of February, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 2, 2015.

Washington County Department of Social Services
Division of Health Care Access and Accountability